

109TH CONGRESS
1ST SESSION

H. R. 1539

To amend the Public Health Service Act with respect to the responsibilities of a pharmacy when a pharmacist employed by the pharmacy refuses to fill a valid prescription for a drug on the basis of religious beliefs or moral convictions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 8, 2005

Mrs. MCCARTHY introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Public Health Service Act with respect to the responsibilities of a pharmacy when a pharmacist employed by the pharmacy refuses to fill a valid prescription for a drug on the basis of religious beliefs or moral convictions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. RESPONSIBILITIES OF PHARMACY REGARDING**
2 **REFUSAL OF PHARMACIST TO FILL VALID**
3 **PRESCRIPTION.**

4 (a) IN GENERAL.—Part B of title II of the Public
5 Health Service Act (42 U.S.C. 238 et seq.) is amended
6 by adding at the end the following section:

7 **“SEC. 249. RESPONSIBILITIES OF PHARMACY REGARDING**
8 **REFUSAL OF PHARMACIST TO FILL VALID**
9 **PRESCRIPTION.**

10 “(a) IN GENERAL.—A pharmacy may not receive any
11 prescription drug in interstate commerce unless the phar-
12 macy maintains compliance with the following require-
13 ments:

14 “(1) If a pharmacist employed by the pharmacy
15 refuses to fill a valid prescription for a drug on the
16 basis of religious beliefs or moral convictions, the
17 pharmacy ensures that the prescription is promptly
18 filled by another pharmacist employed by the phar-
19 macy, not to exceed four hours after such refusal.

20 “(2) The pharmacy does not employ any phar-
21 macist who—

22 “(A) with the intent to prevent a patient
23 from filling a valid prescription for a drug, re-
24 fuses to return an unfilled prescription to the
25 patient, or to transfer an unfilled prescription

1 to another pharmacy at the request of that
2 pharmacy; or

3 “(B) engages in any other conduct with
4 such intent, other than the conduct described in
5 paragraph (1).

6 “(b) EMPLOYMENT AUTHORITY OF PHARMACY.—
7 Subsection (a)(1) does not affect the authority of a phar-
8 macy to employ a pharmacist or to terminate the employ-
9 ment of a pharmacist.

10 “(c) ENFORCEMENT.—

11 “(1) CIVIL PENALTY.—A pharmacy that vio-
12 lates a requirement of subsection (a) is liable to the
13 United States for a civil penalty in an amount not
14 exceeding \$100,000 for all violations litigated in a
15 single civil action.

16 “(2) PRIVATE CAUSE OF ACTION.—A person
17 aggrieved as a result of a violation of a requirement
18 of subsection (a) may, in any court of competent ju-
19 risdiction, commence a civil action against the phar-
20 macy involved to obtain appropriate relief, including
21 actual and punitive damages, injunctive relief, and a
22 reasonable attorney’s fee and cost.

23 “(3) LIMITATIONS.—A civil action under para-
24 graph (1) or (2) may not be commenced against a
25 pharmacy after the expiration of the five-year period

1 beginning on the date on which the pharmacy alleg-
2 edly engaged in the violation involved.

3 “(d) DEFINITIONS.—For purposes of this section:

4 “(1) The term ‘pharmacist’ means a person li-
5 censed by a State to practice pharmacy, including
6 the dispensing and selling of prescription drugs.

7 “(2) The term ‘pharmacy’ means a person
8 who—

9 “(A) is licensed by a State to engage in the
10 business of selling prescription drugs at retail;
11 and

12 “(B) employs one or more pharmacists.

13 “(3) The term ‘prescription drug’ means a drug
14 that is subject to section 503(b)(1) of the Federal
15 Food, Drug, and Cosmetic Act.

16 “(4) The term ‘valid’, with respect to a pre-
17 scription, means a prescription within the meaning
18 of section 503(b)(1) of the Federal Food, Drug, and
19 Cosmetic Act that is in compliance with applicable
20 law, including, in the case of a prescription for a
21 drug that is a controlled substance, compliance with
22 regulations under section 309 of the Controlled Sub-
23 stances Act (part 1306 of title 21, Code of Federal
24 Regulations, or successor regulations).”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) takes effect upon the expiration of 30 days
3 after the date of the enactment of this Act, without regard
4 to whether the Secretary of Health and Human Services
5 has issued any guidance or final rule regarding such
6 amendment.

